

DECISION



29644
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-216620

DATE: October 23, 1984

MATTER OF: Freund Precision, Inc.

DIGEST:

1. No basis exists to preclude a contract award merely because bidder submitted a below cost bid. A below cost bid presents a question of responsibility.
2. Contracting officer has discretion not to conduct a preaward survey, and in the absence of fraud or the failure to apply definitive responsibility criteria, GAO will not review a decision not to conduct a preaward survey or the contracting officer's affirmative determination of responsibility.

Freund Precision, Inc. (FPI), protests the award of a contract for towbars to United Terex (United) by the Navy Aviation Supply Office (Navy) under invitation for bids No. N00383-84-B-0615. FPI contends that United's bid price was too low to successfully perform the contract and that the Navy awarded the contract without conducting a preaward survey or an equal opportunity compliance review as required by Federal Acquisition Regulation §§ 52.222-24 and 52.222-26, 48 Fed. Reg. 41,102, 42,171 (1983) (to be codified at 48 C.F.R. § 14.103-1).

We dismiss the protest.

The submission of a below cost bid is not illegal and provides no basis for challenging the award of a government contract. Whether a bid price is so low that the bidder will not be able to perform the contract satisfactorily is a question concerning the bidder's responsibility. TECOM Incorporated, B-215291, June 19, 1984, 84-1 C.P.D. ¶ 644.

030409

Similarly, the regulations FPI cites concerning the prospective awardee's ability to comply with the solicitation's equal opportunity clause also relate to the bidder's responsibility. The contracting officer must determine the bidder's responsibility before award and may conduct a preaward survey to help do so. However, we have held that a preaward survey is not a legal prerequisite to an affirmative determination of responsibility. It is within the contracting officer's discretion not to conduct a preaward survey and our Office does not review such a decision or protests concerning an affirmative determination of responsibility absent a showing that the contracting officer acted fraudulently or in bad faith or that definitive responsibility criteria have not been met. Xtek, Inc., B-213166, Mar. 5, 1984, 84-1 C.P.D. ¶ 264. Neither exception is alleged here.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel